

Response to Non-Final Office Action
Docket No. A0856

REMARKS

Claims 1-7, 10-17, 20-27, and 30-33 are pending and remain in the application.

5 Claims 1, 2, 6, 7, 10-12, 16, 17, 20-22, 26, 27, and 30-33 remain rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 5,794,207, issued to Walker et al. ("Walker"), in view of U.S. Patent No. 6,529,885, issued to Johnson. Applicant traverses. A *prima facie* case of obviousness case has not been shown.

10 The Walker-Johnson combination fails to teach or suggest the limitations of Claims 1, 11, and 21, part of the showing requisite to *prima facie* obviousness. Ascertaining the differences between the references and the claims requires interpreting the claim language, and considering both the invention and the references as a whole. MPEP 2141.02.

The prior Office action response of January 19, 2007 is incorporated by reference. The outstanding Office language fails to reflect the previously
15 presented amendments. Applicant requests a proper examination for considering the claim amendments and remarks presented in the Office action responses of March 29, 2006; July 19, 2006; and January 19, 2007. See 37 C.F.R. 1.104(a)(1).

Walker teaches communicating a binding CPO to potential sellers, in which acceptance alone binds the parties into a contract, after which the seller
20 must perform and the buyer must pay. Johnson teaches a bank making payment to a seller upon the removal of contingencies by parties to an existing contract. Combining the teachings of Walker and Johnson provides pre-contract formation condition specification and post-contract formation contingency removal. A condition as taught by Walker, originates with a buyer and must be met by a seller
25 only after which a legally binding contract will be formed. A contingency, as taught by Johnson, can originate with, and can be removed by, a buyer, seller, or third party who are involved with a contract, and can be applicable to aspects of the transaction existing independently of the buyer's needs.

30 Claims 1, 11, and 21, on the other hand, recite receiving an offer from a buyer for information wherein the offer includes at least one contingency that

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provides an uncertainty of an event related to the information occurring. No contract between a buyer and a seller is formed upon receipt of an offer alone. In contrast, Walker teaches allowing a buyer to modify a CPO to impose conditions tailored to the buyer's specific needs and those needs serve as preconditions to contract formation. Any seller that chooses to become legally bound in a contracting relationship with the buyer must accept the buyer's conditions, whereas Claims 1, 11, and 21 defer contract formation.

Further, Claims 1, 11, and 21 recite providing the information from a seller in response to the offer, the information *including* at least one condition about the at least one contingency, wherein *satisfaction of the at least one condition will resolve the uncertainty of the event occurring to satisfy* at least one of the contingencies *and will trigger at least part of a payment from the buyer,* and wherein *acceptance of the at least one condition forms a contract and the at least one condition* is unsatisfied when the information is provided. A contract is formed if the *buyer* accepts the *seller's* conditions about the contingency that were included with the information. In contrast, Walker teaches that any uncertainty as to the buyer's conditions are moot because a contract was already formed upon the seller's acceptance of the buyer's conditions. The risk of fulfilling the buyer's conditions remains with the seller, whereas Claims 1, 11, and 21 enable a seller to opt-out of meeting the buyer's contingencies by attaching seller's conditions to the contingencies. As a result, the seller need not perform if the buyer rejects the seller's conditions.

Additionally, Claims 1, 11, and 21 recite receiving *the at least part of the payment upon the satisfaction of the at least one condition after the information has been provided to the buyer and the buyer has subsequently determined that the at least one condition has resolved the uncertainty of the event occurring to satisfy the at least one contingency.* The buyer is able to confirm that the contingency, which will trigger at least a partial payment, has been resolved by the condition that was included with the information. In contrast, Johnson teaches that the occurrence of an event related to the information or goods alone will not

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serve to remove a contingency. A contingency in Johnson is a precondition for a bank to release payment or take other action following removal of the contingency under the contract by either party of the bank.

As a result, the Walker-Johnson combination fails to teach or suggest a pre-contract formation buyer contingencies that provide uncertainty that events related to the information will occur, wherein the seller can set conditions on the buyer's contingencies, which, if met, will trigger at least part of a payment from the buyer. Thus, the combined references fail to teach or suggest all the claim limitations, per independent Claims 1, 11, and 21, part of the showing requisite to *prima facie* obviousness.

Applicant also traverses the Official notice taken to assert that "an artisan of ordinary skill in the art at the time of the invention would find a suggestion or motivation to substitute the CPO in Walker with Johnson's transaction features of iDRAFTTM and iDRAFT-CTM because an artisan at the time of the iTX, of Walker's invention would have recognized the competitive nature of effectuating bilateral buyer-driven commerce and would have availed themselves of the latest technology infrastructure to address the complexities of multi buyer/seller transactions." Applicant further traverses Official notice taken to assert that an artisan at the time of Walker would have been motivated to receive an offer from a buyer for information wherein the offer includes at least one contingency that provides an uncertainty of an event related to the information occurring; provide the information from a seller in response to the offer, the information including at least one condition about the at least one contingency, wherein satisfaction of the at least one condition will resolve the uncertainty of the event occurring to satisfy at least one of the contingencies and will trigger at least part of a payment from the buyer, and wherein acceptance of the at least one condition forms a contract and the at least one condition is unsatisfied when the information is provided; and receive the at least part of the payment upon the satisfaction of the at least one condition after the information has been provided to the buyer and the buyer has subsequently determined that the at least one condition has resolved the

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uncertainty of the event occurring to satisfy the at least one contingency. Merely quoting the claims is insufficient motivation. Accordingly, **Applicant requests an affidavit from the Examiner in support of such taking of Official notice** in respect to the limitations of Claims 1, 11, and 21. *See* 37 C.F.R. § 1.104(d)(2).

5 Accordingly, a *prima facie* case of obviousness has not been shown for independent Claims 1, 11, and 21. Claims 2, 6, 7, 10, and 31 are dependent upon Claim 1 and are patentable for the above-stated reasons, and as further distinguished by the limitations therein. Claims 12, 16, 17, 20, and 32 are dependent upon Claim 11 and are patentable for the above-stated reasons, and as
10 further distinguished by the limitations therein. Claims 22, 26, 27, 30, and 33 are dependent upon Claim 21 and are patentable for the above-stated reasons, and as further distinguished by the limitations therein. Withdrawal of rejection under 35 U.S.C. § 103(a) is respectfully requested.

Claims 3-5, 13-15, and 23-25 remain rejected under 35 U.S.C. § 103(a) as
15 being obvious over Walker as modified by Johnson as applied to Claim 1 and further in view of U.S. Patent No. 5,608,620, issued to Lundgren ("Lundgren"). Applicant traverses.

The prior Office action response of January 19, 2007 is incorporated by reference. The outstanding Office language fails to reflect the previously
20 presented amendments. Applicant requests a proper examination for considering the claim amendments and remarks presented in the Office action responses of March 29, 2006; July 19, 2006; and January 19, 2007. *See* 37 C.F.R. 1.104(a)(1).

Claims 3-5 are dependent upon Claim 1 and are patentable for the reasons stated above with respect to the rejection for obviousness over the Walker-
25 Johnson combination, and as further distinguishable over the Walker-Johnson-Lundgren combination by the limitations therein. Claims 13-15 are dependent upon Claim 11 and are patentable for the reasons stated above with respect to the rejection for obviousness over the Walker-Johnson combination, and as further distinguishable over the Walker-Johnson-Lundgren combination by the
30 limitations therein. Claims 23-25 are dependent upon Claim 21 and are patentable

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for the reasons stated above with respect to the rejection for obviousness over the Walker-Johnson combination, and as further distinguishable over the Walker-Johnson-Lundgren combination by the limitations therein. Withdrawal of rejection under 35 U.S.C. § 103(a) is respectfully requested.

5 In closing, this application was filed on December 8, 2000 and has been pending for more than five years. The application is thus to be considered "special" by the examiner. MPEP 707.02 and 708.01(I).

10 Claims 1-7, 10-17, 20-27, and 30-33 are believed to be in condition for allowance. Applicant requests proper examination of *all* claim amendments and remarks previously presented in responses to the Office actions of March 29, 2006, July 19, 2006, and January 19, 2007. Please contact the undersigned at (206) 381-3900 regarding any questions or concerns associated with the present matter.

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Respectfully submitted,

Dated: July 5, 2007

By: Krystyna Szul
Reg. No. 60,210

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Cascadia Intellectual Property
500 Union Street, Suite 1005
Seattle, WA 98101Telephone: (206) 381-3900
Facsimile: (206) 381-3999

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